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IN THE

Supreme Court of the United States

October Term, 1970
No. 1154

TOM HALDE,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SANTA BARBARA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Petitioner's recitation of the opinions below and jurisdiction are sufficient and satisfactory to respondent.

Question Presented.

Is due process violated when an attorney in direct contempt of court is summarily charged and punished by a judge who has not become personally embroiled with petitioner or otherwise manifested his disqualification?

Statute Involved.

In addition to the pertinent provisions of §1209 of the California Code of Civil Procedure set forth by Petitioner (set out in full in the Appendix hereto), §1211 of the California Code of Civil Procedure provides for summary punishment of direct contempt when

committed either in court or in chambers. The essential portion of §1211 is as follows:

> "When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed."

(Full text in Appendix.)

Statement of the Case.

Petitioner's statement of the facts are essentially correct. However, it needs to be emphasized, and the record so indicates, that in addition to the contemptuous behavior of petitioner manifested by the content and manner of his assertions both to the jury and to the court, he was directed, and indeed ordered, to refrain from such behavior and in some cases admonished to say nothing further, all of which petitioner ignored. Whereas respondent respectfully contends that the words and mannerisms of petitioner were sufficiently contemptuous, there is also involved, irrespective of petitioner's assertions and mannerisms, his failure to obey the reasonable directions of the court.

ARGUMENT.

A. Summary Contempt Was Proper Since Trial Judge Was Not Disqualified.

Summary punishment of a direct contempt by the trial judge is permitted under both federal and states statutes and rules of procedure (Rule 42, Federal Rules of Criminal Procedure; §1211, California Code of Civil Procedure—see Appendix) and such procedures have been sustained by the highest state and federal courts (*Sacher v. United States*, (1951) 343 U.S. 1; *Ungar v. Sarafite*, (1964) 376 U.S. 575; *United States v. Schiffer*, (1965) 351 F. 2d 91, cert. denied 384 U.S. 1003; and in California, *Briggs v. Superior Court*, 211 Cal. 619).

While summary punishment of a direct contempt meted out by a trial judge is unquestionably permitted, there is an exception applicable when and if the trial judge is disqualified, which disqualification occurs when he has "permitted himself to become personally embroiled with the petitioner" or that "there was an intermittently continuous wrangle on an unedifying level between the two," (*Offutt v. United States*, (1954) 348 U.S. 11, 17) or when he demonstrates his bias or impartiality, having a direct personal interest in the outcome of the hearing (*Tumey v. Ohio*, 273 U.S. 510).

Petitioner herein does not allege that the trial judge was disqualified because of his personal embroilment, entanglement or bias, and indeed the record will dis-

close no such disqualification. What the record and the findings of fact do disclose is petitioner's insistence on addressing the jury in a sarcastic and sardonic manner, ignoring at least three warnings and admonitions of the court to refrain from such behavior, a situation not unlike that which occurred in *United States v. Schiffer*, (1965) 351 F. 2d 91, cert. denied 384 U.S. 1003, and further the record will disclose petitioner's insistence on addressing the court (after being directed not to do so) in an unproductive and unnecessary colloquy displaying "disorderly, contemptuous, or insolent behavior toward the judge . . ." [§1209(1) California Code of Civil Procedure—see Appendix]. As was said by this Court in *Ungar v. Sarafite*, 376 U.S. 575, 585, "whatever disagreement there was between petitioner and the judge stemmed from the petitioner's resistence to the authority of the judge . . ." and "petitioner was strongly admonished that his conduct was disruptive and disorderly and that he would be held to the natural consequences of his acts." This warning, the present petitioner wilfully ignored and this disrespect constitutes the essence of his contemptuous behavior. This is not a case where this Court is asked to protect the right of an attorney to forcefully advocate on behalf of his client nor is this a case where petitioner "was acting the role of a resourceful lawyer" (dissenting opinion of Mr. Justice Douglas in *Fisher v. Pace*, (1948) 336 U.S. 155, 166). Petitioner was seeking no affirmative relief by his dissertation with the jury or with the court, and it is because his conduct could have served no useful purpose in the prosecution of his client's case that such conduct was all the more contemptuous.

B. That Trial Was Concluded Is Immaterial.

Petitioner stresses the point that the trial was concluded and, therefore, it did not constitute an interruption or delay in the proceedings. Although the substance of the case was completed, enough remained so that at the insistence of petitioner the jury was retained in the courtroom as well as the court reporter and the judge. In any event, there is no requirement that the contemptuous behavior which may be summarily punished by the trial judge be displayed in the midst of a trial or other judicial proceeding, but only that it is "committed in the immediate view and presence of the court, or of the judge at chambers" (§1211 California Code of Civil Procedure), and if in a federal court, that it occur "in the actual presence of the court" (Rule 42, Federal Rules of Criminal Procedure). Therefore, whether or not petitioner's contemptuous behavior was exhibited after the jury returned a verdict is immaterial. It is an essential attribute of courts "to preserve their authority and to prevent the administration of justice from falling into disrepute." (*Fisher v. Pace*, (1948) 336 U.S. 159.) Further, whether during the course of a trial or not, one may not engage in the presence of the court in "disorderly, contemptuous, or insolent behavior toward the judge while holding the court, . . ." [§1209(1) California Code of Civil Procedure] or in "disobedience of any lawful judgment, order, or process of the court" [§1209(5) California Code of Civil Procedure].

C. Petitioner Has Received Impartial Appellate Review of Law and Fact.

In summary, respondent asserts that this Court has definitively set out guidelines regarding the disqualification of a trial judge from summarily punishing one who acts contemptuously in the presence of the court. In essence, it is a question of whether or not the matter comes within the principles of either the *Sacher* case, *supra*, or the *Offutt* case, *supra*. These cases, as well as the other comparable cases on the subject, were cited to both the California District Court of Appeal and to the California State Supreme Court which courts, by their denial of habeas corpus determined from an examination of the record that factually the trial judge manifested no conduct on his part which would as a matter of law disqualify him from summarily punishing petitioner for his direct contempt.

With respect to petitioner's request for impartial review as an element of due process, as was stated by this Court in *Sacher v. United States*, 343 U.S. 13, "these lawyers have not been condemned, as they claim, merely by the impulse of one lone and hostile judge. Their conduct has been condemned by every judge who has examined this record under a duty to review the facts." This is not to imply that respondent believes or advocates that appellate review should substitute for a deprivation of due process at the initial stage of a proceeding. What we do say is that a hearing before another judge of the trial court (now requested by petitioner) who must of necessity determine the issue of

contempt primarily from a reading of the transcript, affords no greater due process protection than that provided by a review of the same record by distant and impartial appellate courts. In short, then, petitioner has had by virtue of recent scrutiny by the appellate courts of this matter the kind of impartial review which he seeks.

Conclusion.

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondent.

APPENDIX.

California Statutes.

Code of Civil Procedure

§1209.

The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceedings;

3. Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service;

4. Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court;

5. Disobedience of any lawful judgment, order, or process of the court;

6. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

7. Unlawfullly detaining a witness, or party to an action while going to, remaining at, or returning from the court where the action is on the calender for trial;

8. Any other unlawful interference with the process or proceedings of a court;

9. Disobedience of a subpena duly served, or refusing to be sworn or answer as a witness;

10. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action, to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

11. Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

No speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings.

§1211.

When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed.

When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officers.